

**SC Guidance**  
**Frequently Asked Questions for 10 CFR 851**  
**November 30, 2006**

**Note:** The following issues may be of particular interest for SC Site Offices. These questions and responses are taken from the Office of Health, Safety and Security website.

**Fire Protection**

**Question:** How should contractors interpret the adjective “applicable” that is used in conjunction with NFPA codes and standards that are made mandatory in Appendix A, Section 2, under the Fire Protection functional area of the Rule?

**Response:** Applicability can be considered from at least two perspectives. The first relates to the entire code or standard. For example, NFPA Standard 115, “Standard for Laser Fire Protection” would not be applicable in its entirety to a contractor that conducts no work that involves lasers or in an area containing lasers. The second refers to specific sections or paragraphs. For example, those sections and paragraphs of NFPA 101, “Life Safety Code” that govern hospitals would apply to no DOE contractors because there are no DOE hospitals. Those sections and paragraphs of NFPA 101 that relate to “Business Occupancies” (such as an office) would be applicable to all DOE contractors that occupy on-site and off-site (leased) office areas or buildings or conduct DOE-related work in such offices.

**Question:** Considering the fact that DOE facilities have been constructed over a 50(+) year time span under different codes and standards, how should the “code of record” concept be applied when considering the two NFPA codes (70 and 70E) listed in Section 851.23, Safety and Health Standards, and the global requirement to comply with “applicable NFPA codes and standards” in Appendix A, Section 2, under “Fire Protection?”

**Response:** The specific editions of NFPA 70 and 70E that are delineated in Section 851.23 are applicable to all DOE contractors, regardless of the “code of record.” Contractors must either: comply literally with the provisions of these editions; must demonstrate “equivalent” safety under the equivalency provisions of these standards, or contractors can pursue a “Variance” under the Rule’s procedures for requesting approval of variances.

Excluding the above two NFPA codes, the remaining NFPA codes and standards that are applicable to any contractor are subject to “code of record” provisions. There is a distinction because the Rule differentiates between the two above-referenced codes and the remaining NFPA codes and standards that are applicable under the provisions of Appendix A to individual contractors. Additional guidance on the “code of record” concept can be found in DOE-G-440.1/E / DOE-G-420.1/B, “Fire Safety Program” or its successor Guide.

**Pressure Safety**

**Question:** The 10 CFR 851 Final Rule Supplementary Information material published in the Federal Register, Volume 71 Number 27 contains DOE analysis and response to comments on

the proposed rule. In the section addressing comments on Appendix A, Section 4, Pressure Safety, DOE's response (Pages 6913, 6914) to a request for definition of "pressure systems" has expanded the universe of piping and components covered under the Rule. Specifically, DOE notes that the DOE Pressure Safety Committee has, in the draft implementation guide to DOE O 440.1A, defined pressure systems to include vacuum systems. The comment resolution discussion provides the rationale that vacuum systems should be designed to ASME pressure system and component codes due to potential for catastrophic failure due to backfill pressurization. What Pressure Safety standards apply?

**Response:** As the Final Rule is currently written, components and systems must conform to the ASME codes referenced in Appendix A, Section 4 and incorporated by reference in Section 851.27. If vacuum systems are not specifically covered in the codes, they are not included in the applicability of the Final Rule.

### **Occupational Medicine**

**Question:** The requirement for a contractor to "...establish and provide comprehensive occupational medicine services..." to anyone who is employed at a site for more than 30 days. It is assumed that the intent is to flow the requirements down to subcontractors, and not require the Site Occupational Medical Programs to provide services to subcontractors. Please validate.

**Response:** It is the intent that contractors/subcontractors provide for occupational medicine services to their employees who are employed at a site for more than 30 days. The contractor/subcontractor may choose to arrange for services through the site occupational medicine clinic, or through a private local occupational medicine clinic or hospital.

### **Enforcement Conferences**

**Question:** What are the roles of the DOE Headquarters Primary Secretarial Office and the DOE Site Offices for (a) NOV hearings, (b) enforcement at the site, (c) other enforcement or rule responsibilities?

**Response:** Over the past 13 years the Office of Enforcement has worked closely with its DOE counterparts at the Program and Site Office levels in the nuclear safety enforcement. The Office of Enforcement works through the Program and Site Offices when an enforcement action is contemplated. They participate in enforcement proceedings and review and comment on many enforcement documents. These close working relationships and protocols will be similarly exercised in worker safety and health enforcement. In addition to site-specific and program-specific DOE assessment and oversight responsibilities, 10 CFR 851 outlines specific responsibilities, e.g., coordinating on the selection of either a civil or contract penalty when an enforcement action is planned, and reviewing and approving contractor worker safety and health programs and variances.

**Note:** The following questions and answers address issues which were identified by SC, and are not taken from the Office of Health, Safety and Security web site. The answers are compiled from HS correspondence and the draft implementation guide on the worker safety and health rule.

### **Applicability to Visitors**

**Question:** Does 851 apply to activities conducted by users, visiting scientists or guests that are not employees or subcontractors of the M&O contractor?

**Response:** Activities conducted by users, visiting scientists or guests that are not employees or subcontractors of the M&O contractor are not within the scope of the rule.

### **Applicability to Subcontractors**

**Question:** Does 851 apply to subcontractors that are not performing work in furtherance of a DOE mission (e.g., vending machine providers, landscapers)?

**Response:** A contractor is any entity, including affiliated entities, such as a parent corporation, under contract with DOE, including a subcontractor at any tier, with responsibility for performing work at a DOE site in furtherance of a DOE mission. The term "in furtherance of a DOE mission" means that the contractor is doing work that DOE authorized. Vendors, delivery persons and others who do not have service contracts with DOE, or who are not subcontractors, are excluded from the requirements of Part 851 and their employers are not required to develop and implement a DOE-approved Worker Safety and Health Program. The revised draft guide addresses 851.3 to clarify vendors, suppliers, delivery contractors and providers of commercial items are not in scope.

### **Applicability to Subcontractors Providing Commercial Items**

**Question:** Does 851 apply to subcontractors providing commercial items per FAR 2.101?

**Response:** Although the enforcement provisions of Part 851 refer to imposing civil penalties for suppliers who violate the requirements of Part 851, the scope of the regulation indicates that the requirements of Part 851 do not apply to suppliers. "Contractor" is defined at Sec. 851.3 as "any entity . . . under contract with DOE, or a subcontractor at any tier, that has responsibilities for performing work at a DOE site in furtherance of a DOE mission." Since supply contracts would, at most, involve no more than tangential work at a DOE site relating to delivery, installation or repair of their products, they are not considered "contractors" for the purposes of Part 851.

**Responsibility of Contractors for other Contractors**

**Question:** Are prime contractors responsible for the compliance of other DOE prime contractors and subcontractors in the absence of a contractual relationship (i.e., no privity of contract)?

**Response:** The revised guide addresses 851.3 to clarify those whom DOE has a direct contractual relationship for work to be performed at a DOE site. The DOE Office of Enforcement (HS-40) determines which contractors are responsible for non-compliance. The HS-40 “DOE Enforcement Program Plan” addresses which contractor is held responsible for non-compliances, and the responsibility is dependent on who is responsible for controlling the hazard and the exposure to employees.